

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**LORI DRING and NANCY ASARO,
Plaintiffs,**

v.

**MICHAEL G. ABERNATHY, et al.,
Defendants.**

3:23-CV-01576

(WILSON, J.)

**EGAN DEFENDANTS' MOTION TO FILE
ADDITIONAL REPLY BRIEF TO PLAINTIFFS' SUR-REPLY BRIEF**

Defendants Mary Elizabeth Emmel and William J. Egan, Jr., Trustees under the Irrevocable Living Trust Agreement of Elizabeth O'Hara Kelly dated June 6, 2002 ("Kelly Trust") and Defendant William J. Egan ("Egan") (collectively, "Egan Defendants"), by their undersigned counsel, submit their Motion to File Additional Reply Brief to the Sur-Reply Brief filed by Plaintiffs Lori Dring and Nancy Asaro. In support thereof, the Egan Defendants aver as follows:

1. On September 21, 2023, Plaintiffs Lori Dring and Nancy Asaro commenced this action by filing their Complaint consisting of 155 paragraphs spread over 68 pages with 27 separate exhibits attached thereto.
2. In response to Plaintiffs' Complaint, the Egan Defendants timely filed their Motion to Dismiss and thereafter timely filed their Brief in Support thereof.
3. Similarly, the remaining Defendants timely filed their Motion to Dismiss Plaintiffs' Complaint and timely filed their supporting Brief.

4. In opposition to the dispositive motions, Plaintiffs filed their opposing Brief and attached an additional four (4) exhibits thereto.

5. The Egan Defendants and the remaining Defendants timely filed Reply Briefs in support of their pending Motions to Dismiss Plaintiffs' Complaint.

6. In response, Plaintiffs filed a motion seeking permission from this Court to file their Sur Reply Brief which this Court granted by Order dated February 13, 2024.

7. Thereafter, on February 23, 2024, Plaintiffs filed their Sur Reply Brief and again attached four (4) exhibits thereto, including an Agreement and Release from April, 2019 that Plaintiffs had possessed during the past nearly five (5) years.

8. The Agreement and Release from April, 2019 does not refer to or purport to amend or supplement the August 28, 2006 Settlement Agreement attached as Exhibit Q to Plaintiffs' Complaint and relied upon by Defendants in their pending Motions To Dismiss Plaintiffs' Complaint.

9. Plaintiffs also cast aspersions upon the Egan Defendants and accused the Egan Defendants of intentionally failing to attach the April, 2019 Agreement and Release to support their Motion To Dismiss.

10. Curiously, Plaintiffs contend that the April, 2019 agreement supports their position, when, upon cursory review, Paragraphs 4 and 5 thereof demonstrate the fallacy of Plaintiffs' claims:

4. Plaintiffs or their successors-in-interest or successors-in-title reserve the right to defend against any trespass claims filed by Dring and Asaro or their successors-in-interest or successors-in-title for any trespass that may be committed over the west shore strip on or after April 1, 2019 and to defend against any claims for continuing trespass which commenced prior to that date.

5. This Agreement and Release is not intended to be, nor should it be construed, as a waiver by Plaintiffs, their successors-in-interest or successors-in-title of any defense that they may have to any trespass claim instituted by Dring and Asaro or their successors-in-interest or successors-in-title for trespass committed on or after April 1, 2019, or any claim instituted by Dring and Asaro or their successors-in-interest or successors-in-title for continuing trespass which commenced prior to that date.

* * *

11. This Agreement and Release constitutes the entire agreement of all parties as to the matter set forth herein.

See Plaintiffs' Exhibit "1" to their Sur Reply Brief, filed February 23, 2024.

11. In order to properly address issues raised by Plaintiffs' belated reliance upon the April, 2019 Agreement and Release, the Egan Defendants request permission to file an additional reply brief not to exceed eight (8) pages.

12. Good cause exists for the Egan Defendants' request, including Plaintiffs' belated efforts to inject new issues and new arguments into the pending Motions to Dismiss Plaintiffs' Complaint.

WHEREFORE, for all or any of the foregoing reasons, the Egan Defendants respectfully request this Court for its Order allowing them a period of time not to exceed fourteen (14) days to file an Additional Reply Brief in support of their pending Motion To Dismiss Plaintiffs' Complaint and to address the issues raised by Plaintiffs' Sur-Reply Brief and its exhibits.

Respectfully submitted,

s/ Geff Blake

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DATED: March 4, 2024

CERTIFICATE OF NON-CONCURRENCE

The undersigned counsel hereby certifies that he has conferred with Plaintiffs' counsel, and they do not concur in the relief requested in the foregoing Motion.

Counsel for the remaining Defendants concur in the requested relief.

s/ Geff Blake

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Attorney for Egan Defendants

DATED: March 4, 2024

CERTIFICATE OF SERVICE

I, Geff Blake, Esq., hereby certify that on this date, I served a copy of the **Motion to File Reply Bried to Plaintiffs' Sur-Reply Brief** on all counsel of record by **ECF Electronic Delivery**, addressed as follows:

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